

MORNING BUSINESS

Mr. BENNETT. Mr. President, I ask unanimous consent the Senate now proceed to a period of morning business with the following Senators being recognized to speak: Senator CONRAD for 2 minutes, Senator SPECTER for 20 minutes, Senator BYRD for 20 minutes, Senator LANDRIEU for 10 minutes, Senator VOINOVICH for 20 minutes, and Senator DEWINE for an hour.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from North Dakota.

AGRICULTURAL ASSISTANCE

Mr. CONRAD. Mr. President, I thank my colleagues for this very strong show of support for disaster assistance; 57 votes. We had three votes in favor who are missing today, who will be back. So perhaps we will have another opportunity this week to have a vote on this question when we are at full strength.

To those who are on the other side, we respect the differences. We hope you understand the desperate situation that our farm and ranch families face. I again thank each of our 57 colleagues who voted for this. I thank three of our colleagues who are not present and voting today who had announced publicly their support for this position. We believe either later this week or in the new Congress we will prevail.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

A LABOR, HEALTH AND HUMAN SERVICES, EDUCATION APPROPRIATIONS BILL AND HABEAS CORPUS

Mr. SPECTER. Mr. President, I have sought recognition to comment about the appropriations bill covering the Departments of Labor, Health and Human Services, and Education. It had been my hope that before we finished our work in the 109th Congress we would address an appropriations bill on the very important subjects covered by those three major departments—the Department of Labor, the Department of Health and Human Services, and the Department of Education. It appears at this juncture that we will not be taking up that bill, and I think it is very regrettable. Conceivably we could still act, having the balance of this week, and we could be in session next week, but I understand that does not appear to be the will of the Senate to proceed. It is unfortunate because there are a great many priorities which ought to be revised in that budget, which approximates \$147 billion.

We have had a decrease in funding for cancer. As tough as that malady is in the United States, and as many people as it claims, we now find that we have \$50 million a year less for the National Cancer Institute.

We find that there has been a decrease in the funding for the National

Institutes of Health generally, which is unacceptable. Senator TOM HARKIN and I, as chairman and ranking—we change gavels from time to time on that, and we are about to do so again, but we called it a seamless exchange of the gavel—have worked with leadership to increase the funding for the National Institutes of Health from \$12 billion in 1995 to the current recommended funding level of \$28.5 billion. Enormous advances have been made in combating Alzheimer's, Parkinson's, heart disease, cancer, and so many other maladies.

We need to reevaluate many of the other programs in the health field, and in education funding for GEAR UP mentoring program. We need some rescission in appropriations on No Child Left Behind. We need revisions on worker safety. It is totally unsatisfactory to leave the 109th Congress with our having completed action on only 2 of 12 appropriations bills. Ten bills are unattended to. Only the Department of Defense appropriations bill and Homeland Security will have been acted upon, which is not adequate for our responsibilities on these very important subjects.

We had a series of hearings to investigate and inquire into how we ought to spend the money for the Department of Education. Now we are not permitted to act on those recommendations and to reassess the priorities and the interests of the American people. Chairman REGULA of the House of Representatives and I have tried to conference on an informal basis. But I think it is most unfortunate that we are not able to complete this bill.

It is my hope that we will take up the bill early in the 110th Congress. The new majority leader has outlined an ambitious work schedule. This ought to be a priority item to take up.

I have been on the Appropriations Committee for all of my tenure in the Senate, ending my 26th year. We need to do better when we take a look at the appropriations process next year.

Similarly, it had been my hope that we would have moved on the legislation to provide protection for civil liberties on the surveillance program put into effect by the President, which is designed to protect America from another terrorist attack and to balance security interests versus privacy interests.

When this program was disclosed on December 16 of last year, almost a year ago, we moved ahead in the Judiciary Committee to have a series of hearings to try to find a way to have judicial review in accordance with the tradition and concept in the United States, having the impartial magistrate between the Government and the person subject to surveillance, to search and seizure, or to wiretapping. The initial legislation would have given that authority to the Foreign Intelligence Surveillance Court, which was selected because of the expertise that court has and because they can maintain secrecy.

In my legal opinion, there is no doubt that the administration program violates FISA, the Foreign Intelligence Surveillance Act. But the President has asserted that there was article II power, inherent powers as Commander in Chief, which warrants this program without—justifies this program without warrants.

I cosponsored legislation introduced by the senior Senator from California, Mrs. FEINSTEIN, which would extend the time for retroactive approval by the FISA court in 3 to 7 days and would increase the resources so that according to General Alexander, the head of NSA, there were such resources to have individualized warrants for calls originated in the United States and going outside the United States. According to General Alexander and the National Security Administration, and General Hayden his predecessor, there are too many calls coming from outside and in to have individualized warrants. But it would be an enormous step forward for civil liberties to have the individual warrants for calls originating in the United States and going out.

As to the calls originating outside the United States and coming in, let's have the judicial determination made as to whether the President is correct that he has article II powers. That can only be determined by the court, weighing the invasion of privacy on the one hand against the interests of security on the other.

The legislation which I introduced, S. 4051, modifies earlier versions, modifies the so-called Feinstein-Specter bill by recognizing the changing circumstances where a number of district courts have taken up the issue in the U.S. District Court in Detroit to declare the surveillance program unconstitutional. It is now in the Sixth Circuit.

Let the process proceed to have the adjudication as to whether the President is right that there are article II powers or whether there is a violation.

The legislation which I have introduced, S. 4051, on November 14, provides further for mandatory review by the Supreme Court and expedited review. If we would focus on this issue, we could come to grips with it and we could legislate. Every day that passes there is incursion on civil rights and constitutional rights because there are wiretaps which are not supported by affidavit or probable cause and court authorization. We have it within our power to alter that today if we would come to grips with the issues on all the calls originating in the United States and going out and then, to repeat, to allow the court to decide whether the President is correct on whether calls outside coming in are covered by his article II powers.

It is my hope that this legislation will be taken up early in the next session because we ought to come to grips with the balance of rights versus security.